

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: March 10, 2008; Ruling #2008-1963; Agency: Virginia Department of Transportation; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Transportation
Ruling No. 2008-1963
March 10, 2008

The Department of Transportation (the agency) seeks to administratively close the grievant's December 16, 2007 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On December 16 2007, the grievant initiated an expedited grievance challenging a Written Notice with termination of employment issued on December 6, 2007. The grievance advanced through the second step and on or about January 11, 2008, the second step response was provided to the grievant. Because the grievant never advanced or concluded his grievance within five workdays of receipt of the second step response, the agency sent, via U.S. certified and first class mail, a notice of noncompliance to the grievant on January 23, 2008. According to United States Postal Service records, the letter of noncompliance was delivered on January 25, 2008. Because more than five workdays have elapsed since the grievant's alleged receipt of the noncompliance letter, the agency seeks a compliance ruling.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's (EDR's) involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² If the opposing party

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

fails to correct the noncompliance within this five day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for its delay in conforming to EDR's order.³

In this case, the grievant has failed to advance or conclude his grievance within five workdays of receiving the second step response. Moreover, the agency appears to have notified the grievant of his noncompliance, but the grievant has evidently not advanced or concluded his grievance.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure.⁴ This Department therefore orders the grievant, if he has not recently done so, to correct his noncompliance **within ten workdays of the date of this ruling** by either concluding his grievance or indicating on his Grievance Form A that he seeks qualification from the Agency Head and returning the Form A to the agency's human resource department for forwarding to the Agency Head. If he does not, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant the EDR Director the authority to render a decision on a qualifiable issue against a noncompliant party, this Department favors having grievances decided on the merits rather than procedural violations. Thus, the EDR Director will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, this Department will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁴ See *Grievance Procedure Manual* § 3.2.

⁵ See Va. Code § 2.2-1001(5).